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No. 88-628

IN THE

Supreme Court of the United States

October Term, 1988

CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LAROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other parties and organizations acting in concert with the named Petitioners,

Petitioners,

vs.

MINNESOTA COMMISSIONER OF COMMERCE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MINNESOTA

RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Court review a decision by a state court holding that an organization claiming First Amendment status which solicits investments from the public is subject to state securities laws?

2. Does the federal election campaign law immunize federal election campaign committees from the duty to comply with generally applicable state securities laws?

3. Should the Court review a decision of a state administrative law judge imposing sanctions on Petitioners for refusing to provide the names of persons who may be investors even though the state had shown a compelling state interest and was subject to a strict confidentiality order?

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Petitioners,

vs.

MINNESOTA COMMISSIONER OF COMMERCE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MINNESOTA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Minnesota Commissioner of Commerce respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Minnesota Court of Appeals opinion in this case. That opinion is reported at 422 N.W.2d 264 (1988) and is reproduced in Appendix C to the Petition.

JURISDICTION

Petitioners invoke the jurisdiction of this Court solely under 28 U.S.C. § 1254(1). (Petition at 2.) That statute, which relates to cases in the federal circuit courts of appeals, does not furnish this Court with jurisdiction to review the decision of a state court. Accordingly, Petitioners have not provided this Court with a jurisdictional basis to grant the relief they seek.

STATEMENT OF THE CASE

This proceeding was commenced by the issuance of a Cease and Desist Order, Notice of Right to Hearing and Order Suspending Exemption by the Minnesota Commissioner of Commerce ("Respondent" or "Commissioner") on June 4, 1986. An Amended Cease and Desist Order was issued on July 17, 1986. Respondent's Appendix at RA-1.[1] The Amended Cease and Desist Order alleged that Petitioners[2] sold unregistered securities through unlicensed agents in the State of Minnesota and alleged various acts of fraud and failure to disclose material facts.

On July 15, 1987, the Administrative Law Judge ("ALJ") issued proposed Findings of Fact, Conclusions and Recom-

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[1] Matters in Respondent's Appendix will hereinafter be cited as "RA" followed by the page number identifying the document.

[2] Petitioners are Caucus Distributors, Inc. (hereinafter "CDI"), Campaigner Publications, Inc. ("CPI"), Independent Democrats for LaRouche ("IDL"), Ron Fredman ("Fredman"), Ronald R. Bettag ("Bettag"), and Paul Greenberg ("Greenberg"). CDI, CPI, and IDL are sometimes collectively referred to herein as "the organizational Petitioners" and Fredman, Bettag and Greenberg as "the individual Petitioners."

mendation together with an extensive memorandum. (App. F.) The ALJ concluded that the loans and notes offered by Petitioner Fredman were offers to sell securities under the Minnesota Securities Act, Minn. Stat. ch. 80A (1984) ("Blue Sky Act"). He concluded that Petitioners violated the provisions of the Blue Sky Act concerning registration of securities and agents and failed to disclose material facts as required by the Act. He also concluded that Respondent Fredman violated the anti-fraud provision of the Act.

On September 3, 1987, Respondent Minnesota Commissioner of Commerce issued Findings of Fact and Conclusions of Law and Order which are virtually identical to the recommendation of the Administrative Law Judge. Petitioners secured review of Respondent's decision by the Minnesota Court of Appeals which affirmed it on March 30, 1988. The Minnesota Supreme Court denied a petition for further review on June 10, 1988.

The Hearing

A hearing was held before the ALJ on August 4-5, 1986. Mary Mitchell, who had loaned various sums of money to two of the organizational Petitioners and who had received promissory notes evidencing these loans from the organizational Petitioners, was the only person to testify. Mrs. Mitchell, an elderly widow with a high school education, testified that she invested in excess of $40,000 in the organizational Petitioners because they offered her higher interest rates than she was making on certificates of deposit and because of their representation that her investment would be safe. Although she was sympathetic to some of the views advanced by Petitioners, her primary motive in advancing the $40,000 was to make a

profitable and safe investment. (TR-44, TR-57). She refused to contribute any amounts to Petitioners in excess of $25 (TR-111, 118). The Department[3] also introduced into evidence enforcement proceeding documents from other states which alleged that Petitioners were soliciting investments from elderly members of the public in those states.

Background of Order of Preclusion

The ALJ found that a satisfactory record regarding Petitioners' activities could not be made without further discovery and continued the hearing. (RA-8.) There were several additional continuances because of discovery disputes. On January 27, 1987, the ALJ granted the Department's motion to preclude Petitioners from contesting certain allegations in the Amended Cease and Desist Order because of their refusal to comply with material portions of the ALJ's discovery orders. (RA-51.) The events which led to the ALJ's preclusion order will be discussed in the following paragraphs.

In June and July, 1986, the Department served various discovery requests on Petitioners. The Department sought, *inter alia*, the names and addresses of persons in Minnesota who had invested in the organizational Respondents. Petitioners raised various objections to the discovery, including First Amendment claims, and did not respond to material portions of the discovery.

The Department sought discovery of the names and addresses of persons in Minnesota who had invested in the organizational Petitioners for two reasons. First, many courts

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[3] The party appearing in support of the Amended Cease and Desist Order during the administrative hearings was the Enforcement Division of the Minnesota Department of Commerce. It is referred to herein as "the Department."

which apply the commercial/investment dichotomy test in determining if a note is a security have focused on the scope of the offering. The Department sought this information in order to show that the transactions with Mrs. Mitchell were not an isolated phenomenon. Second, the Department needed this information to rebut Petitioners' isolated sales exemption claim. See Minn. Stat. § 80A.15, subd. 2(a) (1984).

Contrary to Petitioners' assertions, the Department never contended that all notes are securities under Minnesota law. The Department did not seek to apply the Minnesota securities law to persons whose primary purpose in loaning money to Petitioners was to support their political or social goals. The Department maintained, however, that the securities law should apply to investors such as Mrs. Mitchell who, while they may have been in sympathy with Petitioners' goals, were induced to loan money through representations concerning the profitability and security of investing in Petitioners and whose primary purpose was to make a profitable investment.

On October 6, 1986, the ALJ issued a discovery order. (RA-13.) That order required that each organizational Petitioner provide certain information to the Department concerning the identities of persons who made loans to the organizational Petitioners or, in the alternative, provide the ALJ with lists of all Minnesota residents who had made loans to the Petitioners, the ALJ then choosing at random the names of 30 persons from each list and providing them to the Department. Finally, the ALJ issued an order permitting limited discovery (RA-13). He also issued a protective order which applied to all discovery which Petitioners claimed was subject to First Amendment protections (RA-13). In a memorandum attached to the protective order, the ALJ balanced the First Amendment rights of Petitioners with the com-

pelling state interest of the Department in conducting discovery. The Petitioners did not comply with the discovery order.

At October 24, 1986, the Department moved for an order of the ALJ precluding Petitioners from contesting certain allegations in the Amended Cease and Desist Order. (RA-40.) These were the allegations which the Department might have been able to prove through the testimony of persons whose identities were to be disclosed pursuant to the ALJ's Order of October 6, 1986, but were not disclosed. On December 2, 1986, the ALJ denied the Department's request for preclusion or other sanctions because he believed the Petitioners' noncompliance was due, in large part, to the seizure of their business records by state and federal authorities in Virginia. (RA-44.)

At or about this time, Petitioners furnished the Department with the names and addresses of seven persons in Minnesota who had loaned money to them. The Department then renewed its complaint about discovery to the ALJ. It argued that Petitioners had selectively provided it with only the names of persons whose loans were not made as investments. It also contended that the other 40 persons whose names were not disclosed might well fit Mrs. Mitchell's profile as a person whose primary intent was to make an investment.

On December 15, 1986, the ALJ issued another discovery order. (RA-48.) The ALJ directed Petitioners to provide the Department with various information concerning Minnesota residents to whom offers or sales of promissory notes had been made and who had not requested anonymity and, as to persons who had requested anonymity, to provide the information to the ALJ who would then randomly select 25 percent of the names of those individuals and accompanying data

and provide it to the Department's counsel. The protective order required the Department to maintain strict confidentiality. The ALJ also indicated that noncompliance with the order would result in the imposition of sanctions including preclusion of the presentation of evidence.

On December 23, 1986, counsel for Petitioners wrote to the ALJ advising that his clients would not disclose any names of Minnesota residents to whom it had offered promissory notes. On January 17, 1987, the ALJ issued an order denying a request for an interlocutory appeal of his discovery order, rescheduling the continued hearing to a date certain, and permitting Petitioners an opportunity to submit written argument addressing the propriety of the sanctions proposed by the Department. (RA-51.)

On January 27, 1987, the ALJ issued an order imposing sanctions for noncompliance with discovery. The order precluded Petitioners from contesting the last sentence in paragraph 1 and paragraphs 2 and 7 of the Amended Cease and Desist Order. (RA-51.)

REASONS FOR DENYING THE PETITION

The special and important reasons set forth in Rule 17 of this Court which might support granting of a petition for a writ of certiorari are lacking here. The issues were fully considered and correctly decided below. Petitioners have cited no federal or state court decisions which are in direct conflict with the rulings below. Moreover, although various issues of federal law are raised, neither the record nor existing precedent supports Petitioners' claims.

I. THE MINNESOTA SECURITIES ACT APPLIES TO PETITIONERS' INVESTMENT PROGRAM.

Petitioners initially argue that the Minnesota courts erred in determining that their notes were securities because, in balancing the various factors, the Minnesota courts failed to give due weight to their First Amendment status. They do not attack the constitutionality of the Blue Sky Act as applied to them. Assuming, *arguendo*, that Petitioners are organizations which espouse political ideas and are entitled to special First Amendment protection, this argument is nothing more than a challenge to the interpretation of a Minnesota statute by a Minnesota court because it attacks only the balancing process. This is purely an issue of state law. This Court, of course, should not grant certiorari to review an issue of state law.

Even if their argument is construed as an attack on the statute as applied, review should not be granted because the factual record does not support Petitioners' claims. Petitioners called no witnesses and ignored the administrative subpoenas served on them by the Department. Their assertions that they are First Amendment political organizations have virtually no support in the record. There was no testimony that the loans were used to further First Amendment purposes. The Administrative Law Judge who heard the case found that the complaining witness invested over $40,000 in CDI because she viewed it as a profitable investment.

In any event, First Amendment freedoms are subject to restrictions when a compelling government interest supports the restriction. *Buckley v. Valeo*, 424 U.S. 1 (1975); *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960). This Court has recognized the existence of such a compelling state interest in the application of a charitable solicitation law to a religious

organization, *Larson v. Valente*, 456 U.S. 228 (1982). Organizations may not commit a fraud on the public in the cloak of religion. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). When investments are made for the purpose of obtaining a profit as a result of general public solicitation, the First Amendment offers no shield from the application of securities laws. *Securities and Exchange Comm'n v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976).

Petitioners' "parade of horribles" on pp. 11-15 of their Petition demonstrates why the investments which they offered to the complaining witness *should be* within the power of the states to regulate. Petitioners have countless other alternatives available to them to raise money, including solicitation of contributions and the sale of literature. However, if Petitioners wish to raise funds by offering profit-making investments to the general public with promises of safe and lucrative returns, as was the case with the complaining witness here, then prospective investors *should* have the right to know that the soliciting organizations "do not have large capital assets," "do not tend to accumulate capital," and have made claims which "do not turn out to be factual." Petition at 11.

II. THE FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974 DO NOT PREEMPT STATE BLUE SKY LAWS.

Petitioners contend that the Federal Election Campaign Act Amendments of 1974, Pub. L. Nos. 93-443, 88 Stat. 1263, reprinted in 1974 U.S. Code Congressional and Admin. News 1436, *et seq.*, Election Campaign Amendments of 1974, preempt Minnesota's Blue Sky Law with respect to loans made to it. The relevant portion of the law provides:

> The provisions of chapter 29 of Title 18 United States Code, relating to elections and political activities, and preempt any provisional state law with respect to election of federal office.

2 U.S.C. § 453 (1985).

Petitioners assert that the Minnesota Blue Sky Law is preempted by this provision even though the Blue Sky Law is a law of general application rather than a "provision of state law with respect to election of federal office."

The preemption issue arises from a unique factual situation. The complaining witness made various investments in CDI and received various promissory notes in return. Some of the promissory notes bore the name of IDL, a federal election campaign committee.[4] Respondent knows of no other instance in which a federal election campaign committee has made a general solicitation of loans as investments from the public. This appears to be solely relevant to the practices of IDL. Since most preemption issues are likely to involve the relationship of federal and state *election* laws, review of the issue by this Court is unlikely to produce a decision which will shape the development of the law in the area of preemption.

IDL faces a heavy burden in arguing preemption. As this Court has noted, "[t]he goal of any preemption inquiry is 'to determine the congressional plan.'" *[illegible] v. Rehner*, 463 U.S. 713 (1983), quoting *Pennsylvania v. Nelson*, 350 U.S. 497 (1956). In making that inquiry, " 'we start with the assumption that the historic police powers of the States were not to be superseded by Federal Act unless that was the clear and manifest purpose of Congress.' " *Jones v. Rath Packing*

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[4] The complaining witness apparently wrote out one check for $1,000 directly to IDL at the direction of CDI. (TR-45.)

Co., 430 U.S. 519 (1977), quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947). "This assumption provides assurance that 'the federal-state balance' [citation omitted] will not be disturbed unintentionally by Congress or unnecessarily by the courts." *Id.*

Accordingly, it is well settled that " 'an unexpressed purpose to nullify. . . [state power] is not lightly to be attributed to Congress.' " *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 103-104 (1980), quoting *Parker v. Brown*, 317 U.S. 341, 351 (1943). "Preemption of state law by federal statute or regulation is not favored 'in the absense of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained.' " *Chicago & N.W. Transp. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981), quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). Where possible—as it is here—"the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.' " *Merrill Lynch, Pierce, Fenner & Smith v. Ware*, 414 U.S. 117, 127 (1973), quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963).

Petitioners quote from *Louisiana Public Service Comm'n v. F.C.C.*, 106 S. Ct. 1890 (1986) summarizing the situations in which preemption can occur. However, none of the various situations where preemption may occur as set forth in *Louisiana Public Service Comm'n* are present here. They will be discussed in the remainder of this section.

Congress in enacting the 1974 amendments did not express any intent to preempt all State law as it may apply to campaign committees. Congress clearly intended to preempt most state laws specifically dealing with election matters. However,

Petitioners suggest no authority for the proposition that Congress intended to preempt laws of general application outside the area of elections, such as the law at issue, insofar as they may apply to a federal election campaign committee.

Indeed, despite the seemingly absolute preemption of state *election* laws as they may relate to federal elections, the Conference Committee which enacted section 104 stated that it "does not affect state laws as to the manner of qualifying as a candidate, or the dates and places of elections." S. Rep. No. 93-689, 93rd Cong., 2d Sess. 1974, *reprinted in* 1974 U.S. Code Cong. and Admin. News 5668. The Committee explained further that:

> The provisions of the conference substitute make it clear that Federal Law occupies the field with respect to criminal sanctions relating to sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law.

S. Rep. No. 93-689, 93rd Cong., 2d Sess. 1974, *reprinted in* 1974 U.S. Code Cong. and Admin. News at 5587, 5638. If preemption of election-related laws was not complete, preemption of laws of general application outside the area of elections certainly was not intended.

A further reason to reject preemption is that there is no outright or actual conflict between federal and state law. The 1974 federal statute was enacted:

> to impose overall limitations on campaign expenditures and political contributions; to provide that each candidate for Federal office shall designate a principal campaign committee; to provide for a single reporting responsibility with respect to receipts and expenditures

> by certain political committees; to change the campaign expenditures and political contributions; to provide for public financing of Presidential nominating conventions and Presidential primary elections; and for other purposes.

Pub. L. No. 93-443, 88 Stat. 1263-1304, codified as amended at 2 U.S.C. §§ 431-455. The Minnesota Blue Sky Act does not conflict with these purposes in any way; its focus is on unsound investments. The public purposes served are different but complementary, and effectuation of one does not hinder the other.

Compliance with both federal and state law is possible. If a federal campaign committee chooses to offer securities to the investing public, it can comply with both the registration and notification requirements of the Minnesota law and the federal election law.

Congress clearly could not have intended to exempt federal campaign committees from state laws of general application outside the election area because the scope of the federal enactment is so limited. Federal law requires that a committee have a treasurer and governs accounting practices, reporting of contributions and financial records, 2 U.S.C. § 432, registration, 2 U.S.C. § 433, and general reporting requirements, 2 U.S.C. § 434-435. There are no other restrictions or limitations on what a committee may do. The focus of the federal election law is on the political process—the public's right to know the sources of a candidate's funding, limitations on campaign expenditures and public financing. Obviously, a federal election campaign committee could violate many state laws of general application such as tort law, commercial law and the like. There is nothing in the federal law concerning protection of third parties who may be injured by the activities of cam-

paign committees. There is no reason to immunize campaign committees from the application of state laws because the committees are federally constituted.

Congress has not legislated comprehensively, thus occupying the entire field of regulation. Congress had not legislated comprehensively with respect to election law let alone with respect to other matters of general application such as state security laws. Congress has made no attempt to cover all matters which may in one way or another relate to federal campaign committees.

The Blue Sky Act does not stand as an obstacle to the accomplishment and execution of the full intent of congress. Enforcement of the Minnesota Blue Sky Act as to federal campaign committees which choose to sell securities will not hamper the accomplishment of congressional intent on elections in any way. The state court was therefore correct in rejecting Petitioners' preemption argument and the issue does not warrant this Court's review.

III. THE ALJ'S ORDER PRECLUDING PETITIONERS FROM CONTESTING CERTAIN ALLEGATIONS OF THE AMENDED CEASE AND DESIST ORDER BECAUSE OF THEIR REFUSAL TO COMPLY WITH HIS DISCOVERY ORDERS DID NOT VIOLATE THEIR CONSTITUTIONAL RIGHTS.

The ALJ's order precluding Petitioners from introducing evidence challenging certain allegations in the Amended Cease and Desist Order is a discovery order in which he balanced the conflicting interests of the parties. (RA-55.) Petitioners admit that he was entitled to balance the interests, Petition at 20, but ask this Court to second-guess his decision. The issue is so dependent on the particular procedural and factual

circumstances of this case that it is unsuitable for review by this Court. Moreover, an administrative law judge's decision on discovery is entitled to great deference by appellate courts. Two appellate courts have already reviewed the ALJ's decision without disturbing it and there is no reason for this Court to repeat that exercise.

The ALJ's Order precluding Petitioners from contesting certain allegations of the Amended Cease and Desist Order was justified by the Department's compelling interest in obtaining the information and did not violate Petitioners' constitutional rights. The Department commenced this hearing on the basis of a complaint by a single Minnesota investor. The Department attempted to obtain the names and addresses of Petitioners' other Minnesota investors (or a representative sampling of the investors) from Petitioners, both before and after the commencement of the proceeding. Petitioners admit that there are at least 48 such persons but, in response to the Department's interrogatories and the ALJ's orders, produced but seven names and addresses, which they selected themselves.

The Department was seriously prejudiced by Petitioners' failure to provide these names and addresses, or at least a representative sampling of them, as required by the ALJ's orders. First, the information was necessary to rebut Petitioners' isolated sales exemption claim. *See* Minn. Stat. § 80A.15, subd. 2(a) (1985 Supp.).[5] Petitioners point to nothing in the record supporting their contention that they aban-

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[5] Minn. Stat. § 80A.15, subd. 2(a) (1985 Supp.), exempts isolated sales, provided that no person shall make more than ten sales of securities of the same issuer in a 12-month period, and provided further that in the case of an issuer, the sales are not advertised for sale to the public through a program of general solicitation by mail or telephone.

doned this claim before the ALJ issued his order of preclusion. They cannot because they did not. Second, the information sought by the Department was important to show that Petitioners were engaged in widespread solicitation of the public to raise money. Under the "commercial/investment dichotomy test" which was adopted by the Minnesota Court of Appeals, App. C 16-17, this is a factor in determining whether or not a note is security and the facts and circumstances of the offering are critical. Indeed, this was very important information.

The right to privacy in one's political associations and beliefs is not absolute. It will yield to a subordinating interest of the state that is compelling in nature. *NAACP v. Alabama*, 357 U.S. 449, 464 (1958). Minnesota's securities laws constitute such a compelling interest. They have several interrelated purposes. One is to regulate the merits of securities offered for sale in the state. *State v. Investors Security Corp.*, 209 N.W.2d 405 (Minn. 1973). Another is to assure confidence in investments and trading. The laws are also designed to prevent deception. *Northwest Bancorp. v. Benson*, 6 F. Supp. 704 (D. Minn.), *aff'd*, 292 U.S. 606 (1934). Ever since the landmark Minnesota Supreme Court decision in *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 117 N.W. 937 (1920), Minnesota securities laws have been broadly construed to protect Minnesota citizens from an endless variety of get-rich-quick schemes calculated to despoil credulous individuals of their savings.

The ALJ and the court below found that a compelling state interest had been shown. (App. C and F.) *See Local 1814 v. Waterfront Comm'n*, 667 F.2d 267 (2d Cir. 1981), and *Federal Election Comm'n v. The LaRouche Campaign*, 644 F. Supp. 120 (S.D.N.Y. 1986), *modified*, 817 F.2d 235 (2d Cir. 1987). In addition, the ALJ found that the Department had shown

that disclosure bore a substantial relation to the State's interest and balanced the Department's interest in disclosure against the likelihood of injury to the organizational Petitioners or their adherents if the desired information was released. (RA-24-26.) He found the Department's request satisfied each of these tests. *Id.*

The ALJ believed that he had a duty to approve only the least inclusive and narrowest inquiry necessary to accommodate the Department's interest, (RA-25). He pointed out that limited discovery had not worked in this case:

> Initially . . . the Respondents were ordered to disclose a limited number of names of individuals who loaned money to the Respondents. The Department argues that obtaining the names of Minnesota residents making loans to the Respondents in a piecemeal fashion is unworkable because the Respondent may produce the names of activists whose factual situations are least likely to fit the profile of an investor and who, it was implied, might be hostile toward him. Although the discovery originally ordered by the [ALJ] did not result in identifying any individuals in the same position as Mrs. Mitchell, the [ALJ] is not persuaded that a wholesale disclosure of all the contributors should be ordered at this time. Instead, disclosure options should be fashioned which identify persons like Mrs. Mitchell, rather than political activists who work for or who are members of the Respondent organization. The Respondents themselves have not made any suggestions on how that should be accomplished and have not indicated, even in general terms, the numbers of loans that may have been made by Minnesota residents.

(RA-25-26.) The ALJ then issued an order which included the following:

> Since the Commissioner is most directly concerned with the persons who have made loans evidenced by notes and who are not political activists; and since the privacy interests of those activists are more compelling than those of persons like Mrs. Mitchell, who are more concerned with a return on their investment, the [ALJ] believes that the following Order is appropriate:
>
> 1. That each organizational Respondent shall provide the Commissioner with a list of all the persons identified in Item 1, provided that no person must be disclosed who are officers, directors, employees, independent contractors, members or volunteer workers for the organizational Respondents, unless the required listing for any Respondent is less than 25 persons.
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> 2. In the alternative, each Respondent shall provide the Judge, under seal, with a list of all the persons identified in Item 1 who, since September 1, 1983, made loans to them which are represented by a note or other promise of repayment by any Respondent (including all persons who purchased a note). The Judge shall then provide the Commissioner with the names of 30 persons from each list which are chosen at random (exclusive of the names already provided). Upon receipt of notice of the persons selected, the Respondents shall provide the Commissioner with the other information specified in Item 1.

(RA-26-27.)

The ALJ also issued a comprehensive protective order to protect the confidentiality of those persons whose names were

disclosed. (RA-28.) Despite the protective order, Petitioners refused to comply with the ALJ's order and did not provide the information which they were required to provide. After the Department renewed its complaint about Petitioners' noncompliance, the ALJ issued a new discovery order, modifying his previous order. This order accommodated Petitioners' desire to preserve the anonymity of their lenders to the maximum extent possible but required, at a minimum, that Petitioners provide the names and addresses to the ALJ who would then turn over 25 percent of the names to the Department. (RA-49.) This provision addressed the Department's legitimate concern that if Petitioners were allowed to choose the names they disclosed they would disclose the names of party activists who did not intend their loans as investments rather than persons such as Mrs. Mitchell who were solicited through boiler room tactics and who made their loans primarily as investments.

The ALJ also gave clear warning that sanctions would be imposed for noncompliance. When Petitioners refused to comply, the ALJ issued his order precluding Petitioners from contesting those portions of the Amended Cease and Desist Order to which the testimony of Petitioners' other Minnesota investors would have been directed if their identity had been disclosed.[6]

The ALJ's order was completely proper under the circumstances and does not constitute an abuse of discretion. The Department had every reason to believe that there were many

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[6] The paragraphs upon which preclusion was ordered, including the paragraph which contains the allegation that the notes were securities, are those specified in the Department's memorandum in opposition to a motion for a stay. Document No. 107 at p. 5. Petitioners never raised specific objections to any of these paragraphs.

other Minnesotans who have invested in the organizational Petitioners and who fit Mrs. Mitchell's profile. These persons were entitled to the protection of the Minnesota securities laws. The State had a compelling interest in learning their identity so that it could show that Mrs. Mitchell was not a "one shot phenomenon" but one of many victims of a boiler room operation designed to extract money from elderly and vulnerable persons.

CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari should be denied.

Dated: November 14, 1988.

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
JEROME L. GETZ
Special Assistant
Attorney General
(Counsel of Record)
515 Transportation Building
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Attorneys for Respondent

RESPONDENT'S APPENDIX

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APPENDIX

APPENDIX A

STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

OAH Docket No. COM/1-86-JL, 8-1005-689-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

AMENDED CEASE AND DESIST ORDER, NOTICE OF RIGHT TO HEARING AND ORDER SUSPENDING EXEMPTION

TO: Caucus Distributors, Inc., Campaigner Publications, Inc. and Independent Democrats for LaRouche, 5th Floor, 304 W. 58th Street, New York, N.Y. 10019 and 4507 No. Kedzie Ave., Chicago, IL 60625.

Ron Fredman, Ronald R. Bettag, and Paul Greenberg, 4507 No. Kedzie Ave., Chicago, IL 60625.

And all other persons and organizations acting in concert with the named respondents.

Commissioner of Commerce Michael A. Hatch (hereinafter "Commissioner") has determined as follows:

1. On information and belief Respondents Caucus Distributors, Inc. ("CDI"), Campaigner Publications, Inc. ("CPI"), and Independent Democrats for LaRouche ("IDL") are all entities which are under the common control and direction of the National Caucus of Labor Committees ("NCLC"), an organization with its headquarters in Leesburg, VA. On information and belief, Respondents Ron Fredman and Ronald R. Bettag are officers or employees of Caucus Distributors, Inc. and Campaigner Publications, and Paul Greenberg is an authorized representative of Independent Democrats for LaRouche. Respondents Caucus Distributors, Inc., and Campaigner Publications, Inc., New York corporations, and Independent Democrats for LaRouche, an unincorporated association, acting jointly as part of a common cause and scheme through their officers, directors, agents, employees, assigns, affiliates, representatives and servants, including Respondents Ron Fredman, Ronald R. Bettag, and Paul Greenberg, have offered or sold promissory notes to persons in the State of Minnesota.

2. The promissory notes offered or sold by Respondents constitute securities within the meaning of Minn. Stat. § 80A.14, subd. 18 (1984).

3. These securities were not registered with the Commissioner prior to or at the time of their offer or sale in the State of Minnesota as required by Minn. Stat. § 80A.08 (1984), nor were said securities or their offer or sale exempt from the registration requirements of Minn. Stat. ch. 80A (1984), as amended.

4. Respondents are not licensed to sell securities in the State of Minnesota as required by Minn. Stat. § 80A.04 (1984), nor are they exempt from said licensing requirements.

5. Respondent Ron Fredman told a prospective purchaser of the promissory notes referred to in paragraph 2 that some banks were failing in order to convince her that it would be safer for her to invest her money with Respondent Caucus Distributors than to leave it in a bank, all of which constituted an act, practice or course of business which operates as a fraud or deceit upon a person in violation of Minn. Stat. § 80A.01, subd. (c) (1984).

6. Respondents have fraudulently misdated one of the promissory notes referred to in paragraph 2, all of which constituted an act, practice or course of business which operates as a fraud or deceit upon a person in violation of Minn. Stat. § 80A.01, subd. (c) (1984).

7. In connection with statements made during the offer and sale of the promissory notes referred to in paragraph 2, Respondents omitted to state material facts necessary in order to make the statements made not misleading, including:

a. That the primary source of money available to repay principal and interest on the notes was money obtained from other investors similarly situated;

b. That Respondent CDI was in default on its obligations to repay principal and interest to other investors and one or more judgments had been entered against Respondent CDI for failure to repay principal and interest when due;

c. That some of the promissory notes which would be issued in return for the funds invested in Respondent CDI might be issued by entities other than Respondent CDI;

d. Financial information from which the investors could determine the ability of Respondents to repay the notes when due; and

e. That Respondents were not licensed to sell securities in the State of Minnesota and that the promissory notes were not registered pursuant to the Minnesota securities laws, all in violation of Minn. Stat. § 80A.01, subd. (b) and (c) (1984).

8. On December 2, 1985, the Commissioner issued an Order for Written Statement, Production of Documents and Report of Sales, pursuant to Minn. Stat. § 80A.20 (1984), requiring that Caucus Distributors and Campaigner Publications furnish to the Commissioner within ten days, *inter alia*, a signed written statement, notarized and made under oath, setting forth all facts and circumstances concerning the offer or sale by Caucus Distributors and Campaigner Publications of promissory notes in the State of Minnesota during the period from November 1, 1982 to December 2, 1985 and to furnish copies of certain documents. Caucus Distributors and Campaigner Publications have failed to furnish to the Commissioner the specified written statement and all the documents requested.

9. Respondents, by the conduct described above, have violated the provisions of Minn. Stat. ch. 80A (1984), as amended, and should therefore be ordered to cease and desist from further violations thereof.

10. The following order is necessary and appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. ch. 80A (1984), as amended.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 80A.21 (1984), that Respondents shall cease and desist from offering or selling in the State of Minnesota the above-described or any other securities until com-

pliance with Minn. Stat. ch. 80A (1984), as amended, has been achieved and until further order of the Commissioner;

IT IS FURTHER ORDERED, pursuant to the provisions of Minn. Stat. § 80A.15, subd. 3 (1984), that any exemption from the registration requirements of Minn. Stat. ch. 80A (1984), as amended, claimed by or available to Respondents pursuant to the provisions of Minn. Stat. § 80A.15, subds. 1(g) and 2(a) (Supp. 1985) is hereby summarily suspended pending final determination of this Order;

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 80A.15, subd. 3 (1984) that Respondents shall show cause why the exemption contained in Minn. Stat. § 80A.15, subds. 1(g) and 2(a) (Supp. 1985) should not be revoked with respect to transactions by or on behalf of Respondents;

IT IS FURTHER ORDERED, pursuant to the provisions of Minn. Stat. § 80A.15, subd. 3 (1984) that Respondents shall appear at a hearing to be held at 9:00 a.m. on August 4, 1986, or at a later date if Respondents so request, in Courtroom 12 at the Office of Administrative Hearings, 4th Floor, Summit Bank Building, Minneapolis, Minnesota, before Administrative Law Judge Jon Lunde, 4th Floor, Summit Bank Building, Minneapolis, Minnesota 55415, telephone: (612) 341-7645 duly appointed in this matter by the Chief Administrative Law Judge of the State Office of Administrative Hearings.

The hearing in this matter will be held for the purpose of determining whether the summary suspension of exemption ordered herein and the Cease and Desist Order hereby issued shall be vacated or made permanent as provided by Minn. Stat. §§ 80A.15, subd. 3 and 80A.21 (1984). As provided by Minn. Stat. § 80A.15, subd. 4 (1984), the burden of proving an exemption or an exception from a definition is upon Re-

spondents. (An earlier hearing as to the Cease and Desist Order may be requested by Respondents, which will be held within seven days after the request for a hearing is received by the Commissioner. If no request is received, a hearing will be held as described above.)

The hearing will be conducted pursuant to the contested case procedures of the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.57-14.69 (1984), and pursuant to the rules of the State Office of Administrative Hearings, Minn. Rules pts. 1400.5100-1400.8400 (1985). Copies of these statutes and rules may be obtained from the Minnesota State Documents Center, 117 University Avenue, St. Paul, Minnesota 55155, telephone (612) 297-3000. A person requesting such copies must specify the statutes or rules requested. There is a charge for copies.

Respondents and the Department of Commerce (hereinafter "Department") will be parties to this proceeding. At the hearing, the Department will produce witnesses and documents to prove the allegations contained herein. Respondents may question the Department's witnesses. Respondents may then produce witnesses and documents to refute the Department's allegations. The Department may question Respondents' witnesses. Respondents and the Department will also be provided the opportunity to present arguments in support of their respective positions.

The parties must bring to the hearing all documents, records and witnesses they need to support their positions. Parties may obtain subpoenas to compel the attendance of witnesses or the production of documents, pursuant to Minn. Rules pt. 1400.7000 (1985). If data classified by law as nonpublic is admitted into evidence at the hearing, it may become public unless a party objects and obtains an order pursuant

to Minn. Stat. § 14.60, subd. 2 (1984) preserving the non-public status of the data.

All parties have the right to represent themselves or to be represented throughout these proceedings by an attorney or by a person of their choice, if not otherwise prohibited as the unauthorized practice of law.

If a party fails to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, that party shall be deemed in default and the allegations or issues set forth herein may be deemed proved and the matter determined against the party without further proceedings.

Questions concerning the issues raised in this Order, informal disposition of this proceeding or discovery may be directed to Special Assistant Attorney General Jerome L. Getz, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, telephone (612) 296-9412.

A PARTY INTENDING TO APPEAR AT THE HEARING MUST FILE THE ENCLOSED NOTICE OF APPEARANCE WITH THE ABOVE-NAMED ADMINISTRATIVE LAW JUDGE WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER.

Dated: July 17, 1986.

JAMES MILLER
Deputy Commissioner of
Commerce
State of Minnesota
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-2594

APPENDIX B

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

PREHEARING ORDER

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to a Cease and Desist Order, Notice of Right to Hearing and Order Suspending Exemption, filed on June 6, 1986, and an Amended Cease and Desist Order, Notice of Right to Hearing and Order Suspending Exemption filed on July 21, 1986.

Patrick J. Moran, Moran & Pilger, P.A., Attorneys at Law, 1221 Lamar, Suite 517, Houston, Texas 77010, has appeared on behalf of the above-named Respondents. Jerome L. Getz, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, has

appeared on behalf of the Commissioner of Commerce (Commissioner).

Due to the unavailability of Respondents' counsel on the first hearing date ordered by the Commissioner, the hearing was rescheduled to commence on August 4, 1986, at the agreement of both counsel. The new hearing date was included in the Commissioner's Amended Cease and Desist Order. The Amended Order included additional charges and was followed by additional discovery requests from the Commissioner.

The hearing commenced at 9:00 a.m. on Monday, August 4, 1986. One witness testified at that time. Many of the witnesses subpoenaed by the Department failed to appear at that hearing, and the two who did, did not comply fully with subpoenas which had been mailed to them. Since it was obvious that a satisfactory record regarding the Respondent's activities could not be made without further discovery, and since there is a compelling state interest in the regulation of securities and a compelling need for further information in order to protect the public interest, the Administrative Law Judge ordered a continuance of the hearing and scheduled a prehearing conference, which was held at 10:00 a.m. the following day.

Based upon the discussions occurring at the prehearing conference, and the determinations made at that time, and upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. On or before August 15, 1986, the Respondents shall file and serve their written objections to Exhibits 30 to 35 and indicate their willingness to stipulate to the admission of Exhibit 29. At the same time the Respondents shall file and serve a proposed protective order covering the information obtained by the Department during discovery. The Respon-

dents' filing must include a citation to the legal authorities relied upon. Within five calendar days after receipt of the Respondents' filing, the Commissioner shall file and serve his written response, which shall also contain a citation to relevant legal authority.

2. The Respondents shall, as agreed, immediately proceed to gather all the written records pertaining to any loans, whether paid or unpaid, made to any of the Respondents by Minnesota residents during the period from September 1, 1983 to April 30, 1986.

3. On or before August 27, 1986, the Respondents shall file and serve their objections to the disclosure of any information specified in paragraph 2 or give that information to the Commissioner. The objection must specify the information which it claims is protected by the First Amendment and contain a citation to the legal authorities relied upon. In addition, the objection shall be accompanied by argument and affidavits as to the injury to be suffered by the disclosure sought by the Commissioner, including the harassment or reprisal discovery may cause.

4. On September 5, 1986, the Commissioner shall file and serve his arguments for the disclosure of the information specified in paragraph 2 and his response to the arguments and authorities relied upon by the Respondents. The Commissioner's argument must state the precise information sought and the specific issues on which that information is relevant, and must state whether those issues are likely to be determinative. In addition, the Commissioner must state the reasons why his discovery request is the most restrictive means for accomplishing his objectives.

5. On September 5, 1986, the Respondent (Independent Democrats for LaRouche) shall file its Motion to dismiss the

charges against it based on its claim that the Commissioner's jurisdiction has been preempted by the Federal Elections Commission. At the same time, the Respondents shall file their arguments regarding the Commissioner's authority to subpoena nonresident Respondents and their officers, directors, employees or shareholders under Minn. Stat. § 80A.27, Subd. 8 (1984). The Commissioner shall respond to the Motion within the 10-day period specified in the rules of this Office and shall reply to the Respondents' arguments regarding subpoenas in the prehearing statement filed pursuant to paragraph 6.

6. On September 19, 1986, the Commissioner shall file a Prehearing Statement setting forth the law and the facts relied upon for its conclusion that the loans made to the Respondents by Minnesota residents and the notes issued by them for the repayment of those loans, if any, are securities. The Prehearing Statement shall also contain the Commissioner's arguments regarding the burden of proof in this proceeding, and must state the protective orders desired and any requests to close the hearing under Minn. Stat. § 14.60, Subd. 2, and the legal authority authorizing the actions requested. The Commissioner's Prehearing Statement shall be accompanied by any additional discovery requests or Motions deemed necessary to properly present his case. This is not intended to preclude earlier or later discovery requests or Motions, or limit the discovery undertaken of third persons.

7. On September 30, 1986, the Respondents shall file and serve their Prehearing Statement. It shall contain a brief summary of the law and facts relied upon by the Respondent supporting its argument that the loans and notes in issue in this proceeding are not securities and the exemptions, if any, it claims are applicable under Minn. Stat. § 80A.15. The Re-

spondent's prehearing statement shall also address their position on the burden of proof in this proceeding and their requests, if any, to close the hearing or seal any or all of the hearing record under Minn. Stat. § 14.60, Subd. 2. At the same time, the Respondent shall reply to any additional discovery requests the Department serves and files with its Prehearing Statement.

8. On Friday, October 3, 1986, a telephone conference will be held commencing at 3:00 p.m. The parties shall be available to discuss the status of this proceeding at that time and be prepared to discuss and resolve any discovery issues and other prehearing procedures that must be considered.

9. As suggested by Respondents and agreed to by the Commissioner, the hearing will resume on Wednesday, November 5, 1986, commencing at 9:00 a.m. The hearing will be held in Courtroom 12 at this Office and has been scheduled for completion within three days.

10. Noncompliance with any discovery orders or subpoenas issued by this Office will result in the imposition of sanctions pursuant to the rules of this Office, upon motion by an aggrieved party.

11. Any subpoenas requiring the attendance of nonresident Respondents or witnesses which are issued pursuant to Minn. Stat. § 80A.27, Subd. 8, shall be mailed at least 14 days prior to the commencement of the hearing and notice of the issuance of those subpoenas shall be simultaneously furnished to Respondents' counsel. Respondents' counsel shall be responsible for providing actual notice to his clients of the issuance of those subpoenas.

12. Pending further order, the Commissioner and his officers, employees and counsel shall not disclose or disseminate

any information gained through discovery other than is necessary to prepare and try this case.

Dated this 7th day of August, 1986.

JON L. LUNDE
Administrative Law Judge

APPENDIX C

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT
OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

DISCOVERY ORDER

The above-captioned matter is pending before the undersigned Administrative Law Judge pursuant to hearing Orders issued by the Commissioner of the Minnesota Department of Commerce. Patrick J. Moran, Moran & Pilger, P.A., Attorneys at Law, 1221 Lamar, Suite 517, Houston, Texas 77010, has

appeared on behalf of the above-named Respondents. Jerome L. Getz, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, has appeared on behalf of the Commissioner.

Based upon the arguments and briefs of counsel and upon all the files, records and proceedings herein, and for the reasons set forth in the Memorandum accompanying this Order.

IT IS HEREBY ORDERED:

1. That each organizational Respondent shall forthwith provide the Commissioner with a list of all the persons identified in Item 1 who since September 1, 1983, made loans to them which are represented by a note, or other promise of repayment by any Respondent (including all persons who purchased a note), and the other information specified in Item 1, provided that no persons must be disclosed who are officers, directors, employees, independent contractors, members or volunteer workers for the organizational Respondents, unless the required listing for any Respondent is less than 25 persons.

2. In the alternative, each said Respondent shall forthwith provide the Judge, under seal, with a list of all the persons identified in Item 1 who, since September 1, 1983, made loans to them which are represented by a note, or other promise of repayment by any Respondent (including all persons who purchased a note). The Judge shall then provide the Commissioner with the names of 30 persons from each list which are chosen at random (exclusive the names already provided). Upon receipt of notice of the persons selected, the Respondents shall provide the Commissioner with the other information specified in Item 1.

3. The information specified in Item 2 shall be submitted to the Commissioner when the Respondents submit the in-

formation required under paragraph 1, or when notified of the random selection made by the Judge under paragraph 2.

4. That this Order is stayed for Independent Democrats for LaRouche until its Dismissal Motion on preemption grounds is decided.

5. That the information gained through discovery in this case is subject to the following PROTECTIVE ORDER:

a. That the Commissioner and his employees, investigators and counsel shall make no use of any information gained through discovery in this case other than such use as is necessary to prepare, try and decide the issues in this case. Any other disclosure, publication, or dissemination is prohibited in the absence of further order of the Administrative Law Judge or a court of law.

b. This Protective Order applies to all discovery previously obtained by the Commissioner and to any future information obtained through discovery which is claimed to be confidential under the First Amendment, and applies to any document in this proceeding which refers to or restates information gained through discovery.

c. The Commissioner shall retain all confidential information gained through discovery in a separate file that is not generally accessible except to his counsel and which is clearly identified as containing confidential data.

d. Before any confidential data is revealed to any person by the Commissioner's counsel, that person shall be advised of the terms of this Order.

e. The names of all persons who are given access to confidential data for the purposes set out in a. shall be entered on a log retained by the Commissioner's counsel.

f. When a final decision is reached in this case, all confidential information and copies thereof and a copy of

the Commissioner's log shall be returned to the party which produced them.

Dated this 6th day of October, 1986.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

In this proceeding, the Respondents have been charged with numerous violations of Minn. Stat. § 80A.01 *et seq.*, which govern the sale of securities in this state. Generally speaking, the Commissioner has alleged that the Respondents sold unregistered securities without a license and in connection with those sales acted in a fraudulent, deceptive or misleading manner. The Respondents have denied the charges made. In their view, the promissory notes they issued in return for loans made by Minnesota residents are not securities governed by the statutes, and even if they are, that they are exempt from registration.

In order to prepare for hearing, the Commissioner has requested an Order compelling the Respondents to provide the following information:

Item 1. The names and addresses of all persons residing in, or whose mailing addresses are located within the State of Minnesota to whom offers or sales of promissory notes or any other securities have been made; the dates of said offers or sales, the amounts thereof, the type or types of promissory notes or any other securities involved, if there are more than one, and the name of the person making such offer or sale. (Interrogatory No. 10).

Item 2. All writings of every kind and description, including handwritten notes, in the possession of Respondents

concerning loans by Minnesota residents to any of the Respondents during the period from September 1, 1983, to April 30, 1986. (Subpoena Request).

Item 3. The names of the shareholders of Campaigner Publications, Inc. (CPI). (Interrogatory No. 13).

The Respondents argue that the discovery sought by the Commissioner is protected under the First Amendment and that no order requiring disclosure should be issued. The Respondents' objections raise important issues which require careful consideration.

Freedom of association for the purpose of advancing ideas and airing grievances is protected from encroachment by the states under the First and Fourteenth Amendments. *Bates v. City of Little Rock*, 361 U.S. 516, 522-23 (1960). Since the compelled disclosure of a person's affiliation with groups engaged in the advocacy of ideas may have a chilling effect upon that person's freedom of association, the courts have recognized that a vital relationship exists between the freedom of association and privacy in one's associations. *NAACP v. State of Alabama*, 357 U.S. 449, 462 (1958). In that case the court stated that the inviolability of a person's privacy in group associations may be indispensable to the preservation of the freedom of association granted by the First Amendment, "particularly where a group espouses dissident beliefs." Hence, membership lists are entitled to protection under the First Amendment. *See also, Buckley v. Valeo*, 424 U.S. 1 (1975); *Pollard v. Roberts*, 283 F.Supp. 248 (E.D. Ark.), aff'd, 393 U.S. 14 (1968); *United States v. Citizen State Bank*, 612 F.2d 1091 (8th Cir. 1980). Under the First Amendment, the greatest solicitude must be paid to those threats aimed at suppressing an attempted exercise of political rights. *U.S. v. Carolene Products Co.*, 304 U.S. 144, 152-53, n.4 (1938).

The right to privacy in one's political associations and beliefs is not absolute. It will yield to a subordinating interest of the state that is compelling in nature. *NAACP v. Alabama*, 357 U.S. at 464. A significant encroachment on First Amendment rights cannot be justified by a mere showing of some legitimate governmental interests or a mere suspicion that a law has been violated. *Adolph Coors Co. v. Wallace*, 570 F.Supp. 202, 209 (N.D.Cal. 1983); *Buckley v. Valeo, supra*; *Pollard v. Roberts, supra*. For a state agency to require disclosure, in addition to establishing a compelling interest, the state must show that the disclosure sought bears a substantial relation to the state's interests and represents the least restrictive means for accomplishing the state's objectives. *NAACP v. Alabama*, 357 U.S. at 464; *Adolph Coors v. Wallace*, 570 F.Supp. at 208. It is also necessary to weigh the government's interest in disclosure against the likelihood of injury to an association or its members if the desired information is released. *Adolph Coors Co. v. Wallace*, 570 F.Supp. at 208. *See also, Matter of Agerter*, 353 N.W.2d 908, 913 (Minn. 1984).

The First Amendment rights discussed above apply when the state is seeking to subpoena information during the course of an investigation or when it seeks to obtain that information in the discovery process. *Adolph Coors Co. v. Wallace, supra*; *Marrese v. American Academy of Orthopaedic Surgeons*, 706 F.2d 1488 (7th Cir. 1983); *Savola v. Webster*, 644 F.2d 743 (8th Cir. 1981).

State's Interest in Obtaining Disclosure

The state's securities laws have several interrelated purposes. One is to regulate the merits of securities offered for sale in the state. *State v. Investors Security Corporation*, 209 N.W.2d 405 (Minn. 1973). Another is to assure confidence in

investments and trading. The laws are also designed to prevent deception and save credulity and ignorance from imposition. *Northwest Bancorporation v. Benson*, 6 F.Supp. 704 (D. Minn. 1934), aff'd. 292 U.S. 606. Hence, the securities laws of this state have been broadly construed to protect Minnesota citizens from an endless variety of get-rich-quick schemes calculated to despoil credulous individuals of their savings. *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N.W. 937 (1920).

In *Local 1814 v. Waterfront Commission of New York Harbor*, 667 F.2d 267 (2nd Cir. 1981), the court found that the Waterfront Commission investigating accusations that certain members of a union had been coerced into making donations to the union's Political Action Committee had a compelling interest in obtaining the names of employees who had recently authorized such payroll deductions from their employers. The compelling interest being its interest in fighting crime on the waterfront and preventing the extraction of money by coercive means. The state's interest in regulating securities is no less compelling than the Commission's interest in that case. Since the state has a compelling interest in regulating securities, it must be determined whether the precise materials sought in this case are relevant to the charges made. If they are, the rights and interests of the parties must be balanced to determine whether the public interest overrides the First Amendment rights of the Respondents and others, and whether the discovery request is framed in the least inclusive and intrusive manner possible. *Adolph Coors Co. v. Wallace*, 570 F.2d at 208. *Cf. Savola v. Webster*, 644 F.2d at 746-747.

Relevancy

When First Amendment rights are asserted, the state's interest in disclosure will be relatively weak unless the informa-

tion it seeks to obtain goes to the heart of the matter or is crucial to the case. *Adolph Coors Co. v. Wallace*, 570 F.2d at 208. In such cases the state must demonstrate a high degree of relevancy of the information sought. Official curiosity is insufficient. *Id.* Thus, in *Pollard v. Roberts*, 283 F.Supp. at 57, the court refused to require the Republican Party to disclose the identities of party contributors and the amounts of their contributions in connection with an investigation of suspected vote buying by a state prosecuting attorney. The court found that the identity of party contributors was not reasonably relevant to the state's investigation and concluded that the disclosure of the information was not sufficiently cogent and compelling to outweigh the legitimate and constitutionally protected interests of the Republican party and its contributors in having that information remain private.

In this case, the state has alleged that Respondents have failed to register unexempt securities they sold in this state, thereby violating Minnesota Law. In addition, it has alleged that the sales were made by persons having no license to sell securities, contrary to the state securities laws, and that various fraudulent, misleading or untruthful acts or omissions were made by the Respondents in connection with the sales that were made. The Respondents' position is that the notes they issued are not securities, or if they are, they are exempted from the provisions of Chapter 80A as commercial paper arising out of current transactions or as isolated sales for purposes of Minn. Stat. § 80A.15, subd. 1(g) and subd. 2(a). There are no Minnesota cases which have discussed the circumstances when a note is not a security for purposes of Minn. Stat. § 80A.14, subd. 18. However, other courts have considered the issue. They have usually adopted a commercial-investment test or a risk-capital test to make that determina-

tion. Those tests require a consideration of a number of factors, including:

1. Whether the transaction involved consumer financing.
2. Whether the note is secured by a mortgage on a home.
3. Whether the note is a short-term note secured by a lien on small business.
4. How a reasonable businessman in the commercial world would characterize the instrument.
5. The use to which the proceeds of the note are put.
6. Whether profits come from the efforts of others.
7. The number of notes issued, the number of payees to whom they were issued, and the dollar amounts of the transactions.
8. Whether they are demand notes or other long-term notes.
9. How the parties characterize the notes.
10. How the notes were marketed or characterized by the persons issuing them.
11. Whether the person making the loan is within the class of persons the Legislature was trying to protect under the law.
12. The investors who were solicited by the issuers of the notes.
13. Whether the investor has contributed risk capital subject to the entrepreneurial or managerial efforts of the seller or issuer.
14. The existence and extent of collateralization.

In Item 1, the Commissioner seeks to obtain the names and addresses of all persons in Minnesota who were offered or sold promissory notes or other securities by the Respondents, the dates of the offers or sales, the amounts, and the types of promissory notes or other securities involved, and the name

of the person making the offer or sale. That Interrogatory goes to the heart of this case and the isolated sales exemption claimed by the Respondents. In order to determine if the notes are securities and if that exemption is applicable, the Department must, at a minimum, know how many securities (notes) were issued or sold to Minnesota residents and whether those notes were commercial in nature or involved an investment, using the criteria set forth above.

Prior to August 1, 1985, the isolated sales of securities were excluded from the statutory registration requirements under section 80A.15, subd. 2(a). The exemption applied only if no more than five securities were sold during any period of 12 consecutive months,[1] and where the sales were made by the issuer, the exemption applied only if the issuer reasonably believed that all buyers were purchasing the securities for investment and the securities were not advertised for sale to the general public or through a program of general solicitation by various means including mail or telephone. Since the Respondent is claiming that the sales it made, if any, were isolated sales, it will be necessary to determine the number of sales that were made during any period of 12 consecutive months, whether the sellers reasonably believed that all buyers were purchasing for investment (rather than resale) and whether the securities sold were advertised for sale to the general public or through a program of general solicitation by means of mail or telephone. Moreover, the circumstances surrounding the sale or issuance of each note must be considered to determine if it is a security. All these factors are highly relevant. Indeed, information regarding them is crucial to the state's case. Therefore, the Judge is persuaded that the

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[1] After August 1, 1985, the statute was amended to permit no more than ten isolated sales.

Department has demonstrated a compelling need to obtain the names and addresses of those persons in Minnesota to whom notes or other securities have been sold since August 31, 1983. Likewise, during the same period of time, the Department must be able to obtain the business records, notes and correspondence in the Respondents' possession which pertain to those loans.

Injury Caused by the Discovery Requested

The Respondents have argued that their First Amendment rights, as well as the rights of their members and contributors, will be substantially burdened by the disclosures sought by the Department. When a party claims that it will suffer injury due to the compelled disclosure of membership information or the identities of its "contributors", its claims must be carefully scrutinized to determine whether disclosure will have a chilling affect on the freedom of association. The party objecting to discovery on First Amendment grounds is not required to establish a "chill" with certainty, but need only show some probability that harassment might follow from the disclosure. *Adolph Coors Co. v. Wallace, supra* at 208, n. 18, and 209-10. Thus, in *Buckley v. Valeo, supra,* the United States Supreme Court said that unduly strict requirements of proof of potential harassment could impose a heavy burden on small organizations and they must be allowed sufficient flexibility in proving an injury. In this case, Respondents have shown that Lyndon LaRouche and his followers have been the subject of a substantial amount of criticism and adverse publicity from the Democratic Party. Respondents have not submitted Affidavits showing the experiences of their members or contributors in professional and social setting when their association has become known, and there is little evidence of specific incidents of past or present harassment of members

or contributors resulting from their associational ties. However, a serious claim of infringement has been made. The persons who have made loans to the Respondents will undoubtedly be contacted by departmental investigators or its counsel, and those persons may be summoned to depositions or to the hearing. This could breed apprehension in the minds of those contributors that their support of the Respondents will be the subject of public inquiry, investigation and litigation. As a result, they may cease to provide financial assistance, and if their experience becomes known, others may choose not to provide financial assistance or support to the Respondents. Moreover, the policies of the LaRouche organizations are not popular ones and the disclosure of the identities of their supporters could have an effect on the supporters future employment or appointment to public office. Therefore, the Judge is persuaded that the claims of a chilling effect are sufficient to require that the Department establish a compelling need to obtain the information sought.

Balance of Interests.

Although the First Amendment privacy rights of the Respondent organizations and their members and supporters may be burdened by the disclosure sought, the state's interest in obtaining disclosure outweighs those privacy interests. If the state cannot obtain the requested information, its ability to regulate the securities of political associations generally will be severely crippled if not destroyed, and in this case, it is likely that the charges will have to be dismissed. Therefore, it is concluded that the state's interests outweigh those asserted by the Respondents. Although there is some reason to question the extent to which the political representations of any group should be reviewed for accuracy, it has not been argued that political associations are exempt from the secu-

rities act, and the only decision bearing on that issue suggests that no such exemption exists. *Cf. SEC v. World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976). The information sought goes to the essence of the charges in this case and must be disclosed if the state is to carry out its statutory responsibilities. Moreover, the states action is not based on a mere suspicion of impropriety or official curiosity. On the contrary, it is based on a bona fide complaint. Therefore, it is concluded that the interests of the state outweigh those asserted by Respondents. This is most true as to those persons who have made loans to the Respondent primarily as an investment or for profit motives, but is less true for members and supporters of the principles espoused by Lyndon LaRouche whose loans may have been made primarily for political purposes. Nonetheless, the states interests, in balance, also outweigh those of the latter group.

Least Inclusive and Intrusive Discovery

When the state has a compelling interest in obtaining discovery of information that is protected under the First Amendment, the only discovery authorized is the least inclusive and narrowest inquiry necessary to accommodate that interest. *Adolph Coors Co. v. Wallace, supra,* and *Savola v. Webster, supra.* Moreover, it has been suggested that discovery proceed in stages, where possible, to avoid unnecessary disclosures. *Marrese v. American Academy of Orthopaedic Surgeons, supra.* Thus in *Local 1814 v. The Waterfront of Commission of New York Harbor, supra,* the court modified the Waterfront Commission subpoena of the names of all longshoremen who had recently authorized payroll deductions to a union's Political Action Committee to permit only a ten percent random sampling. Initially, a similar approach was taken by the Judge in this case and the Respondents were

ordered to disclose a limited number of names of individuals who loaned money to the Respondents. The Department argues that obtaining the names of Minnesota residents making loans to the Respondents in a piecemeal fashion is unworkable because the Respondent may produce the names of activists whose factual situations are least likely to fit the profile of an investor and who, it was implied, might be hostile toward him. Although the discovery originally ordered by the Judge did not result in identifying any individuals in the same position as Mrs. Mitchell, the Judge is not persuaded that a wholesale disclosure of all the contributors should be ordered at this time. Instead, disclosure options should be fashioned which identify persons like Mrs. Mitchell, rather than political activists who work for or who are members of the Respondent organizations. The Respondents themselves have not made any suggestions on how that should be accomplished and have not indicated, even in general terms, the numbers of loans that may have been made by Minnesota residents.

Since the Commissioner is most directly concerned with the persons who have made loans evidenced by notes and who are not political activists; and since the privacy interests of those activists are more compelling than those of persons like Mrs. Mitchell, who are more concerned with a return on their investment, the Judge believes that the following Order is appropriate:

1. That each organizational Respondent shall provide the Commissioner with a list of all the persons identified in Item 1 who, since September 1, 1983, made loans to them which are represented by a note, or other promise of repayment by any Respondent (including all persons who purchased a note) and the other information speci-

fied in Item 1, provided that no persons must be disclosed who are officers, directors, employees, independent contractors, members or volunteer workers for the organizational Respondents, unless the required listing for any Respondent is less than 25 persons.

2. In the alternative, each Respondent shall provide the Judge, under seal, with a list of all the persons identified in Item 1 who, since September 1, 1983, made loans to them which are represented by a note or other promise of repayment by any Respondent (including all persons who purchased a note). The Judge shall then provide the Commissioner with the names of 30 persons from each list which are chosen at random (exclusive the names already provided). Upon receipt of notice of the persons selected, the Respondents shall provide the Commissioner with the other information specified in Item 1.
3. The information specified in Item 2 shall be submitted to the Commissioner when the Respondents submit the information supplied under paragraph 1, or when notified of the random selection made by the Judge under paragraph 2.

The Respondents CPI shall not be required to disclose the names of its shareholders at this time. Although the Department has argued that all the Respondent organizations are under common control such that the notes they have issued should be aggregated for purposes of determining whether or not the statutory minimum number of sales was exceeded at any time, it will not be necessary to disclose those names unless it later appears that no violation existed apart from aggregation.

Protective Order

Under the Rules of Civil Procedure for District Courts, Rule 26.03, an order may be issued to protect a person or party from annoyance, embarrassment, or oppression, which might follow from the disclosure of information. Those rules may be applied in administrative proceedings under Minn. Rule 1400.6600 (1985) and Minn. Stat. 14.60, subd. 2 (1984). The privacy interests of a party include the privacy of their political associations, and is a proper subject of a Protective Order under the civil rule and the statute cited above. *Settle Times Co. v. Rhinehart*, 104 S.Ct. 2199, 2208, n.21, 81 L.Ed.2d 17 (1986). Based on the holding in that case and the discussion in this Memorandum, it is concluded that a Protective Order must be issued in this case to avoid dissemination or publication of the identities of persons who have made loans to the Respondents and the identities of persons who are employees, workers, activists, founders, directors, or owners of the Respondent organizations. The Protective Order should cover all information gained by the Complainant through the discovery process and may be modified only upon further order.

J.L.L.

APPENDIX D

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

ORDER DENYING MOTION TO DISMISS RESPONDENT INDEPENDENT DEMOCRATS FOR LAROUCHE AND RECEIVING EXHIBITS FOR LIMITED PURPOSES

The above-captioned matter is pending before the undersigned Administrative Law Judge pursuant to hearing Orders issued by the Commissioner of the Minnesota Department of Commerce (Commissioner). Patrick J. Moran, Moran & Pilger, P.A., Attorneys at Law, 1221 Lamar, Suite 517, Houston, Texas 77010, has appeared on behalf of the above-named Respondents. Jerome L. Getz, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street,

St. Paul, Minnesota 55101, has appeared on behalf of the Department of Commerce (Department or State).

Based upon the arguments and briefs of counsel and upon all the files, records and proceedings herein, and for the reasons set forth in the Memorandum accompanying this Order,

IT IS HEREBY ORDERED: That the Dismissal Motion on preemption grounds filed by Independent Democrats for LaRouche be and it hereby is denied; and Exhibits 30-35 are received in evidence for the purposes stated in the attached Memorandum.

Dated this 10th day of October, 1986.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

The Respondent, Independent Democrats for LaRouche (IDL), argues that it must be dismissed from this proceeding because the Department's jurisdiction to regulate it has been preempted by the Federal Election Campaign Act Amendments of 1974, amending 2 U.S.C. § 431 *et seq.* IDL bases its preemption argument on the provisions in section 453, which reads as follows:

> The provisions of this Act, and of rules prescribed under this Act, supercede and preempt any provision of State law with respect to election to Federal office.

Federal law is supreme and prevails over conflicting state laws, which are subordinate. In determining whether a federal statute supersedes state laws, or whether federal laws have occupied a field in such a way as to exclude state regulation, the entire scheme of the federal statute must be considered, including the nature of the power exerted and the object sought to be obtained. *See, generally,* 81A C.J.S. § 24b, p. 329.

Federal law will preempt state law when (1) Congress expresses a clear intent to preempt, (2) there is a conflict between state and federal law, (3) compliance with both state and federal laws is physically impossible, (4) there is an implicit barrier to state regulation in a federal law, (5) federal legislation is comprehensive and occupies an entire field leaving no room for state supplementation, or (6) state law creates an obstacle to the accomplishment and execution of Congressional objectives. *Louisiana Public Service Commission v. FCC*, —— U.S. ——, 106 S.Ct. 1890, 1898-99 (1986).

IDL argues that Congress clearly intended to occupy the field with respect to loans and other contributions to candidates for federal office and to preempt state securities law applicable to such loans, and it argues that state securities laws create an irreconcilable conflict with federal laws which requires that they be preempted. Those arguments are not persuasive. Congress did not intend to occupy the field of the regulation of loans or other campaign contributions received by campaign committees. This conclusion is supported by the language of section 453, the legislative history of the federal laws, court decisions, and interpretations of the Federal Elections Commission (FEC).

Section 453, cited above, states that the federal laws preempt state law "with respect to election to federal office." The state's securities laws are not "election laws" and they do not specifically deal with loans or contributions received by campaign committees working for a person's election to federal office. Nowhere in the 1984 federal laws or in anything cited by the Respondent is there language or authority which suggest that Congress intended to preempt laws of general application outside the area of elections. Moreover, even the preemption mandated in the federal law is not complete as to

election laws. Such being the case, it is unlikely that Congress intended to preempt laws of general application outside the area of elections. The purpose of the 1984 federal law[1] is expressed as follows:

> To impose overall limitations on campaign expenditures and political contributions; to provide that each candidate for Federal office shall designate a principal campaign committee, to provide for a single reporting responsibility with respect to receipts and expenditures by certain political committees; to change the time for the filing of reports regarding campaign expenditures and political contributions; to provide for public financing of Presidential nominating conventions and Presidential primary elections; and for other purposes.

The express preemption in section 453 applies only to laws dealing with the election to federal office. Moreover, even in that area, the Federal Act was not intended to preempt state laws relating to the manner of qualifying as a candidate or the dates and places of elections. *See*, Senate Conf. Report No. 1237, reprinted at 1974 U.S. Code Cong. & Ad. News 5587, 5618, 5668.

Courts that have considered the scope of the Federal Act have found that state laws pertaining to elections are not necessarily preempted by the Federal Act. In *Pollard v. Board of Police Commissioners*, 665 S.W.2d 333 (Mo.banc. 1984), *cert. den.*, 105 S.Ct. 3534, the Missouri Supreme Court concluded that the Act did not preempt a state statute prohibiting officers or employees of the Kansas City Police Department from making political campaign contributions in any elections. In that case, the court noted that the legislative history

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[1] Pub.L. No. 93-433, 88 Stat. 1263-1304 (codified as amended at 2 U.S.C., §§ 431-55 (1976)).

of the Federal Act clearly shows that Congress did not intend to preempt state little Hatch Acts or other similar laws. It concluded that the legislative history makes it clear that the statute was intended to preempt the limited field of statutes imposing restrictions on candidates for federal office and their campaign committees. *Id.* at 337. Likewise, in *Reeder v. Kansas City Bd. of Police Com'rs.*, 733 F.2d 543 (8th Cir. 1984), the court reviewed the same Missouri statute and concluded, as did the Missouri Supreme Court, that the Missouri law prohibiting campaign contributions by officers or employees of the Kansas City Police Department was not preempted by the Federal Act.

In *Friends of Phil Gramm v. Americans for Phil Gramm*, 587 F.Supp. 769 (E.D.Va. 1984), the court found that the Federal Election Act preempts state law within the scope of the Federal Act's prohibition against political committees including the name of any candidate in its title if it is not an authorized committee. However, in addressing the issue of state laws pertaining to fraud, the court stated (p. 776):

> The right to use a candidate's name described above is not unqualified. The First Amendment does not protect knowingly false statements. * * * Nor does the Federal Election Act categorically preclude a state law cause of action for fraud. The Act nowhere specifically addresses the problem of fraud and political advertising. Congress obviously did not intend completely to preclude state regulation in this area, thus giving political organizations license to mislead. The only reasonable conclusion is that Congress intended to leave regulation of fraud in political advertising to the states, except where such regulation conflicts with the Act's specific provisions.

Similarly, in *Washington Education Ass'n v. Smith*, 96 Wash. 2d 601, 638 P.2d 77 (1981), the Washington Supreme Court found that a state statute that did not permit the state budget director to allow voluntary payroll deductions for employees for purposes of making direct contributions to political action committees of the employees' labor associations was not in conflict with the Federal Election Campaign Act and was not preempted by it, because there was nothing in the Federal Act that required employers to establish payroll deduction plans for its employees.

Advisory opinions issued by the FEC also indicate that the Federal Act does not generally preempt state law. Thus, in AO 1980—47, CCH Federal Election Campaign Financing Guide, ¶ 5497, the FEC issued an advisory opinion stating that the Federal Act does not preempt a Maryland law prohibiting payments to certain workers on an election day. Likewise, in an advisory opinion dated October 27, 1976, the FEC stated that a gross receipts tax on concert tickets for admission to live entertainment provided in connection with a fundraiser of a political committee was a revenue measure and not an election matter preempted by the Federal Act. CCH Federal Election Campaign Financing Guide, ¶ 6043.

The cases and opinions cited above persuade the Judge that the federal laws relied upon by the Respondent IDL do not express an intent to preempt all state laws which may affect campaign committees, or occupy the field of regulation of such committees. Therefore, a finding of preemption is appropriate only if there is a conflict between the state's securities law and the federal law, if compliance with both is physically impossible or if state law creates an obstacle to the accomplishment and execution of Congressional objectives. IDL has not shown that any of those factors exist here and the Judge is

persuaded by the Department's arguments that none of the factors set out in *Louisiana Public Service Commission v. FCC, supra,* apply.

Under 2 U.S.C. § 431(8)(A), only loans made for the purpose of influencing election to federal office are covered by the Federal Act. Loans made for investment purposes do not appear to come within the statute, and IDL has presented no evidence that the loans made to it by Minnesota residents were made to influence election to Federal office. Even if some, or all of the loans made to IDL were made, in whole or in part, to influence election to Federal Office, IDL has not shown that state regulation of such loans, when evidenced by notes or other securities, are preempted. The Federal Act does not occupy the field, and IDL has not shown that the state's regulation of loans evidenced by notes or other securities is inconsistent with any specific statutory provision or that state regulation of loans involving securities frustrates any federal purpose.

As noted in the Department's brief, preemption should not be found unless an intent to preempt is the clear and manifest purpose of Congress and, where possible, the historic police powers of the state should be reconciled with federal acts. In this case, the Judge is persuaded that state securities laws have not been totally preempted by the federal act, and since no specific inconsistencies have been shown, the Judge is persuaded that the state laws applicable to the securities issued by IDL have not been preempted in whole or in part.

IDL also argued that the security acts are preempted under 18 U.S.C., §§ 594-607. However, the legislative history cited by the parties clearly shows that Congress intended to preempt state laws relating to the specific crimes mentioned, and did not intended to affect the states powers to prohibit false

registration, voting fraud, theft of ballots and similar offenses under state law. IDL has cited no authority to indicate that there is any conflict between state law and the criminal laws cited above, that those criminal laws were designed to preempt state securities regulations, or that any inherent inconsistency exists. For all these reasons it is concluded that the state's authority to regulate IDL, assuming it is an authorized political committee for purposes of the federal statutes, has not been preempted.

Admissibility of Exhibits 30-35.

The Commissioner has offered into evidence certified copies of the pleadings, orders and subpoenas issued by the securities departments of other states. Included in the pleadings and orders issued are copies of affidavits made by individuals in those states regarding loans made to the Respondents, and copies of checks and notes pertaining to those loans.

The exhibits have been offered to show (1) that a number of securities commissioners around the country have concluded that analogous loans are securities under the laws of their states, (2) that the Respondents have solicited investments in other states which, if they had taken place in Minnesota, would be in violation of Minnesota law, and (3) that the transaction with Mrs. Mitchell was not an isolated phenomenon, i.e., that the Respondents have offered or sold notes or made loans in other states. Respondents object to the admissibility of the exhibits on hearsay grounds. The Commissioner argues, however, that they are admissible under Rule 803(8) as public records. Rule 803(8) of the Minnesota Rules of Evidence provides:

> (8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office

> or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases and petty misdemeanors matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings except petty misdemeanors and against the State in criminal cases and petty misdemeanors, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

Under Exception (A), records maintained by a state agency are admissible to prove the truth of the matters contained in them. This exception applies, for example, to records of receipts and disbursements and licenses issued. The allegations in complaints and orders of any agency are not admissible under this exception. Likewise, those allegations are not admissible as matters observed, because they were not, or as investigative reports. In *U.S. v. Stone*, 604 F.2d 922, 924-26 (5th Cir. 1979), the exception for investigative reports was held to exclude reports pertaining to specific litigation. Therefore, the complaints and orders issued by other state agencies are inadmissible to prove the truth of the matters asserted in them. Nonetheless, they will be received in evidence for the limited purpose of showing that a particular complaint or order was issued. For such a purpose, they are not hearsay evidence.

The affidavits contained in the records of other state agencies, including copies of notes and checks evidencing loans made to the Respondents are also inadmissible under Rule 803(8) to prove the truth of the matters asserted in them. However, that does not end the inquiry that must be made.

The rules of evidence in administrative proceedings are governed by Minn. Stat. § 14.60, subd. 1, which reads:

> Subd. 1. Admissibility. In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. * * *

Under the statute, as set forth in Minn. Rule 1400.7300, subp. 1 (1985) hearsay evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs is admissible.[2] In determining whether hearsay evidence is admissible under this rule, McCormick has suggested several criteria that should be considered: (1) the nature of the evidence, (2) whether better evidence available, (3) how precise the agency's factfinding must be, and (4) the administrative policy behind the statute being enforced, i.e., is this a high volume, low cost proceeding where an expeditious decision is needed. McCormick, Evidence, § 353, p. 1013-1016 (3d.ed. 1984).

Based on these factors, it is concluded that the affidavits and supporting documentation in the disputed exhibits may be admitted into evidence for the limited purpose of showing that persons in other states have made loans to the Respondents which are represented by promissory notes. That evidence has a sufficient degree of reliability to be admitted because it reflects transactions with more than one individual in more than one state and was no doubt investigated by each state agency before formal action was taken. The investigations that necessarily occurred, followed as they were by formal action, tend to support the reliability of those docu-

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[2] Affidavits are generally inadmissible in civil proceedings but are sometimes admissible in administrative proceedings. 2A C.J.S., Affidavits, § 58, p. 505-06.

ments. Similar policy reasons permit investigatory reports to be admitted in evidence under Rule 803(8). Moreover, it is not practical to obtain better evidence regarding the Respondent loans in other states. The primary inquiry in this case involves the Respondent's activities in this state, but in determining whether the Respondents have sold securities, it is appropriate to consider whether loans were made in other states, even though it is not necessary or desirable to consider the specifics of those transactions. Hence, the affidavits and other supporting documentation in the exhibits will be received for the limited purpose of showing that loans were made to the Respondents in other states. However, they will not be received for the purpose of showing that those loans were securities.

J.L.L.

APPENDIX E

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
DEPARTMENT OF COMMERCE

OAH Docket No. COM/1-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

NOTICE OF MOTION AND MOTION

TO: EACH OF THE ABOVE-NAMED RESPONDENTS.

PLEASE TAKE NOTICE that pursuant to the Rules of the Office of Administrative Hearings of the State of Minnesota, Minn. Rules 1400.6600 and 1400.6700, the Enforcement Division of the Minnesota Department of Commerce has submitted the motion below to the Honorable Jon Lunde, Administrative Law Judge. The motion is based on the affidavit of Jerome L. Getz, sworn to on October 24, 1986 and all the files herein. Please be advised that if you wish to contest the motion, you must file a written response with the judge and serve copies on all parties within ten (10) working days after

it is received. A telephone hearing will be conducted at 10:00 a.m. on October 28, 1986.

Pursuant to Minn. Rules 1400.6700, subp. 3 petitioner hereby applies for an order of the Judge precluding Respondents from contesting the allegations in the Amended Cease and Desist Order or raising any affirmative defenses to the allegations. In the alternative, Petitioner seeks an order of the Judge that all allegations in the Amended Cease and Desist Order which Petitioner might be able to prove through the testimony of the persons whose names were to be disclosed pursuant to paragraphs 1 and 2 of the Administrative Law Judge's discovery order dated October 6, 1986 be deemed admitted and that Respondents be precluded from raising any affirmative defenses which might be rebutted by the testimony of such persons.

Dated: October 24, 1986.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
By: JEROME L. GETZ
Special Assistant
Attorney General
1100 Bremer Tower
7th and Minnesota Street
St. Paul, Minnesota 55101
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Attorneys for Petitioner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE
DEPARTMENT OF COMMERCE

OAH Docket No. COM/1-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

AFFIDAVIT OF JEROME L. GETZ

STATE OF MINNESOTA
COUNTY OF RAMSEY—ss.

JEROME L. GETZ, being sworn, says:

1. I am a Special Assistant Attorney General of the State of Minnesota and am attorney for petitioner herein. I make this affidavit in support of petitioner's motion for an order seeking relief from respondents for failure to comply with a discovery order previously issued herein by the Administrative Law Judge.

2. On October 6, 1986 the Administrative Law Judge issued a discovery order in which he required each organizational respondent to provide petitioner "forthwith" with a list of all persons residing in, or whose mailing address is located within the State of Minnesota to whom offers for sales

of promissory notes or any other securities have been made, the dates of said offers of sales, the amounts thereof, the type or types of promissory notes or any other securities involved, if there are more than one, and the name of the person making such offer or sale, provided that no persons must be disclosed who are officers, directors, employees, independent contractors, members or volunteer workers for the organizational respondents, unless the required listing for any respondent is less than 25 persons. In the alternative, the Administrative Law Judge ordered each organizational respondent to provide the Judge "forthwith", under seal, with a list of all such persons who since September 1, 1983, made loans to them which are represented by a note, or other promise of repayment by any respondent (including all persons who purchased a note).

3. Seventeen days have now passed since the Judge's order was issued and Respondents have not provided Petitioner with any names as required under the discovery order.

4. The hearing in this proceeding is scheduled to resume on November 5. Petitioner cannot properly prepare to present its case without the disclosure of the information called for under the discovery order. Because it will take time to locate and interview these persons, Petitioner is already prejudiced by the nondisclosure of their names and the other information requested.

JEROME L. GETZ
Special Assistant
Attorney General

Subscribed and sworn to before me this 24th day of October, 1986. Kim J. Wagner, Notary Public.

APPENDIX F

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA
DEPARTMENT OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

ORDER DENYING MOTION FOR PRECLUSION, ESTABLISHING REPORTING REQUIREMENTS AND SETTING A HEARING DATE

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to hearing orders issued by the Commissioner of Commerce. Patrick J. Moran, Moran & Pilger, P.A., Attorneys at Law, 1221 Lamar, Suite 517, Houston, Texas 77010, has appeared on behalf of the above-named Respondents. Jerome L. Getz, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, has appeared on behalf of the Minnesota Department of Commerce (Department).

On October 27, 1986, the Department filed a Motion for an order precluding the Respondents from contesting the allegations in the Amended Cease and Desist Order or raising any affirmative defenses to those allegations, or in the alternative, an order that any allegations in the Amended Cease and Desist Order that the Department might be able to prove by the testimony of the persons whose names were to be disclosed pursuant to the Judge's Discovery Order of October 6, 1986, be deemed admitted and that the Respondents be precluded from raising any affirmative defenses which might be rebutted by the testimony of those persons. On October 28, 1986, commencing at 10:00 a.m., a telephone conference was held between the parties and the Judge to discuss the Department's Motion and the Respondents' objections to it. Pursuant to the Judge's directive, the Respondents have provided affidavits regarding their inability to comply with prior discovery orders and have filed a status report.

Based upon all the files, records and proceedings herein, including the arguments and affidavits submitted by the parties,

IT IS HEREBY ORDERED:

1. That the Department's request for preclusion or other sanctions as a result of the Respondents' failure to comply with discovery orders is DENIED.

2. That a prehearing telephone conference will be held between the parties and the Judge at 1:00 p.m. on Friday, December 12, 1986, to discuss the Respondents' request that persons who desire anonymity be exempted from the Judge's Discovery Order and to discuss the status of the Respondents' efforts to comply with paragraph 4 of this Order.

3. That the hearing will reconvene, assuming compliance with the Judge's discovery orders, on Wednesday, January 28,

1987, at 9:00 a.m. at the Office of Administrative Hearings. Three days have been scheduled for its completion.

4. That the Respondents shall immediately take reasonable steps to obtain a list of the persons to whom loans have been made from the personal recollections of Ron Fredman, Ronald R. Bettag and Paul Greenberg, and from the records that do exist in the Respondents' Chicago offices, and be prepared to discuss the efforts that it has undertaken during the telephone conference on December 12.

Dated this 2nd day of December, 1986.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

In response to the Department's request for the imposition of sanctions against the Respondents for their failure to provide a list of names of Minnesota lenders and the documents pertaining to the loans that were made, the Respondents have submitted two affidavits of Suzanne Rose. In her affidavits, Ms. Rose stated that the Respondents have been unable to fully comply with the discovery orders issued in this case because its business records were seized by federal and state authorities on October 6, 1986, pursuant to a search warrant issued to the Attorney General of the State of Virginia. Among the documents seized at that time were a list of Minnesota lenders and contributors and the documents underlying those transactions.

In determining whether sanctions should be imposed for noncompliance with a discovery order, the Judge must consider the following factors:

(1) Prejudice to the party seeking discovery,

(2) Whether the noncomplying party had clear warning that noncompliance would result in the imposition of sanctions,

(3) Whether less harsh sanctions can accomplish the objectives of securing discovery compliance while assuring that the parties are properly prepared for trial, and

(4) The willfulness of the party's noncompliance.

See, e.g., Dennie v. Metropolitan Medical Center, 387 N.W.2d 401 (Minn. 1986); *Hoyland v. Kelly*, 379 N.W.2d 150 (Minn. App. 1985).

In this case, the Respondents had clear warning that noncompliance would result in the imposition of sanctions. Notice was given to the Respondents during telephone conferences with the Department and the Judge, and notice was included in one of the Judge's prehearing orders. In addition, less severe alternatives to the imposition of sanctions are not available, due largely to the fact that the Judge is not authorized, in this proceeding, to tax any costs or disbursements against the Respondents. Nonetheless, the imposition of sanctions in this case is inappropriate because the delays that will be occasioned by the Respondents' noncompliance are not significantly prejudicial to the Department and because the Respondents' noncompliance was due, in a large part, to its inability to comply due to the seizure of its business records. Therefore, the Judge is not persuaded that the imposition of sanctions is appropriate at this time.

J.L.L.

APPENDIX G

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT
OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

DISCOVERY ORDER

On Friday, December 12, 1986, a prehearing telephone conference was held between the undersigned Administrative Law Judge and counsel for both parties to this case. The purpose of that telephone conference was to discuss the Respondents' efforts to comply with prior discovery Orders and to determine whether the Judge's prior discovery Orders should be modified to recognize that certain individuals have requested that their names not be disclosed to the Department.

Based upon the determinations made during the prehearing telephone conference on December 12, 1986,

IT IS HEREBY ORDERED:

1. That on or before December 19, 1986, the Respondents shall mail to the Department's counsel a list of the names and addresses of all persons residing in, or whose mailing addresses are located within, the State of Minnesota to whom offers or sales of promissory notes or other securities have been made; the dates of said offers or sales, the amounts thereof, the type or types of promissory notes or other securities involved, if there are more than one, and the name of the person making such offer or sale; and all writings of every kind and description, including handwritten notes, in the possession of Respondents concerning loans made by such persons during the period from September 1, 1983, to April 30, 1986, provided, however, that the Respondents need not disclose the names of any individuals or other information pertaining to the loans made by individuals that have requested anonymity under this paragraph.

2. If the Respondents are unable to provide all the writings specified in paragraph 1 on December 19, 1986, the Respondents shall notify the Department's counsel of the documents that have not been disclosed, the reasons for nondisclosure, and the date by which they will be provided.

3. On December 19, 1986, the Respondents shall also submit to the Judge, under seal, the information specified in paragraph 1 for those individuals who have requested anonymity. The Judge will randomly select 25 percent of the names of those individuals and accompanying data and provide it to the Department's counsel. At the same time, the Judge will notify the Respondents of the names randomly selected. Upon receipt of that notification, the Respondents shall forthwith provide Department's counsel with the information specified in paragraph 2 regarding those individuals.

4. All information provided to the Department pursuant to this Order is subject to the same protective Order contained in the Judge's October 6, 1986 Discovery Order.

5. Noncompliance with this Order shall result in the imposition of sanctions, including the issuance of a default determination, striking certain defenses, or precluding the presentation of evidence.

Dated this 15th day of December, 1986.

JON L. LUNDE
Administrative Law Judge

APPENDIX H

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

ORDER DENYING CERTIFICATION AND A STAY

On December 15, 1986, a Discovery Order requiring the Respondents to disclose information concerning loans made to them by Minnesota residents was issued. The terms of that Discovery Order repeated verbal determinations made by the Administrative Law Judge during a telephone conference with counsel on December 12, 1986. Subsequently, after the time for compliance with the Discovery Order expired, Respondents notified the Administrative Law Judge that they would not comply with it. In their letter, the Respondents requested an opportunity for an interlocutory appeal of the Discovery

Order or a stay which would permit them to litigate that Order in Federal Court. On December 29, 1986, counsel were notified, by letter, that the Respondents' December 23, 1986 letter would be treated as a Motion for a stay in the imposition of sanctions pending court action to challenge the Discovery Order issued, and advising the Department that it should respond to it as a Motion. On January 12, 1987, the Department filed its objections to the relief requested by the Respondents.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. That the Respondents' requested interlocutory appeal of the Discovery Order in this case is DENIED.

2. That the Respondents' requested stay of the scheduled hearing is DENIED.

3. That in the absence of a Court Order to the contrary, the hearing will proceed as scheduled on January 28, 1987.

4. That in the absence of a Court Order modifying the Discovery Order, sanctions for noncompliance with it will be imposed.

5. That no sanctions will be imposed until the Respondents have an opportunity to submit written arguments addressing the propriety of the sanctions proposed by the Department in the Memorandum it filed with the Administrative Law Judge on January 12, 1987.

6. That the Respondents shall reply to the sanctions proposed by the Department in writing on or before January 26, 1987.

Dated this 13th day of January, 1987.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

Under Minn. Rule 1400.7600 (1985), some Motions may be certified to an agency. The rule permits certification before or after the issuance of an Order. The rule states in part:

> * * * Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. * * *

Under the rule cited above, discovery orders and motions for discovery are not certifiable because they involve interpretations of the discovery rules of this office. Consequently, Respondents' request for an interlocutory appeal of the disputed Discovery Order may not be granted. Since the Judge has no other source of authority for granting an interlocutory appeal to a party, its first request must be denied.

The Administrative Law Judge does have authority to continue the date of the hearing under Minn. Rule 1400.7500 (1985) upon a showing of good cause. However, the Administrative Law Judge is not persuaded that good cause exists to stay the scheduled hearing. Several delays have already occurred and the Administrative Law Judge has no guarantees that the Respondents will, in fact, seek or obtain interlocutory review of the disputed Discovery Order or that interlocutory relief will be diligently pursued. Under the circumstances, the requested stay should be denied.

If the Respondents desire interlocutory review, they should seek relief in the appropriate court and obtain the necessary writ of prohibition or a temporary injunction restraining this proceeding. Any other disposition would permit the Respondents to unnecessarily prolong this proceeding and deprive the

Department and the Judge of any control over the prompt filing and diligent prosecution of the relief it seeks.

Before sanctions are imposed, Respondents should be given an opportunity to respond to the specific sanctions suggested by the Department in its Memorandum of January 9, 1987. Delaying the imposition of sanctions will also enable the Respondents to seek judicial relief before any sanctions are imposed.

J.L.L.

APPENDIX I

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT
OF COMMERCE

COM/S-86-047-JL
8-1005-698-2

In the Matter of CAUCUS DISTRIBUTORS, INC., and CAMPAIGNER PUBLICATIONS, INC., New York Corporations, INDEPENDENT DEMOCRATS FOR LaROUCHE, an unincorporated association, RON FREDMAN, RONALD R. BETTAG, PAUL GREENBERG, and all other persons and organizations acting in concert with the named respondents.

ORDER IMPOSING SANCTIONS
FOR NONCOMPLIANCE
WITH DISCOVERY

On October 6, 1986, a Discovery Order requiring the Respondents to disclose information concerning loans to them by Minnesota residents was issued. The Respondents did not comply with the terms of that Discovery Order. Consequently, on October 27, 1986, the Minnesota Department of Commerce (Department) moved for an Order precluding the Respondents from contesting the allegations in the Amended Cease and Desist Order or raising any affirmative defenses to the allegations set forth therein. On October 28, 1986, a telephone

conference was held to discuss the Department's Motion and the Respondents' objections to it. On December 2, 1986, an Order was issued denying the Department's request for the imposition of sanctions, ordering the Respondents to take reasonable steps to comply with the October 6 Discovery Order, and scheduling a telephone conference for December 12, 1986. On December 15, 1986, an additional Order was issued which required the Respondents to disclose information concerning loans made to them by Minnesota residents. That Discovery Order repeated verbal determinations made by the Administrative Law Judge during a telephone conference with counsel on December 12. After the time for compliance with the December 15, 1986 Discovery Order expired, Respondents notified the Judge that they would not comply with it. In their letter, the Respondents requested an opportunity for an interlocutory appeal of the Discovery Order or a stay which would permit them to litigate that Order in court. On January 12, 1987, the Department filed its objections to the relief requested by the Respondents. On January 13, 1987, the Respondents' request for certification of the Judge's Discovery Order or a stay pending a challenge of that Order was denied. At the same time, the Respondent was ordered to respond to the Department's Motion for the imposition of sanctions for noncompliance with the Judge's Discovery Orders. On Monday, January 26, 1987, the Respondent filed its objections to the imposition of sanctions.

NOW, THEREFORE, based upon the files, records and proceedings herein,

IT IS HEREBY ORDERED: That pursuant to the provisions of Minn. Rule 1400.6700, subp. 3 (1985), the Respondents are hereby precluded from contesting the last sentence in paragraph 1, and paragraphs 2 and 7 of the Department's

Amended Cease and Desist Order due to their expressed intention not to comply with the Judge's December 15, 1986 Discovery Order.

Dated this 27th day of January, 1987.

JON L. LUNDE

Administrative Law Judge

MEMORANDUM

On December 24, 1986, counsel for the Respondents notified the Administrative Law Judge in writing that the Respondents would not comply with the December 15, 1986 Discovery Order requiring them to disclose the names of some of the Minnesota residents who made loans to them. The Respondents' failure to comply with that Discovery Order makes it virtually impossible to determine the legal issues raised in the Department's pleadings or whether the Department's Cease and Desist Order should be made permanent. Since the information requested by the Department is essential in order to properly administer the securities laws of this State or to determine whether the promissory notes issued by the Respondents constitute securities, the Department will be substantially prejudiced by the Respondents' noncompliance. Since the Respondents have had clear warning that sanctions would be imposed for noncompliance, since their refusal to comply is willful, since they have not challenged the Order in Court, and since less severe alternatives are not available, severe sanctions should be imposed. *See, e.g., Sudheimer v. Sudheimer*, 372 N.W.2d 792 (Minn. App. 1985); *Peters v. Peters*, 374 N.W.2d 335 (Minn. App. 1985); *Hoyland v. Kelly*, 379 N.W.2d 150 (Minn. App. 1985). *See also, First National Bank of Shakopee v. Department of Commerce*, 310 Minn. 127, 245 N.W.2d 861 (1976).

The Respondents argue that the information the Department now has is sufficient and that no sanctions should be imposed before they have an opportunity to challenge the Discovery Order in Court. Neither of those arguments are persuasive. In determining whether the Respondents have sold securities in the State of Minnesota, a substantial number of diverse factors and transactions must be examined. The Administrative Law Judge is not persuaded that the Department has been provided with enough information to make a reliable or adequate record in this case. In addition, the Judge is not persuaded that sanctions should be postponed until the constitutional issues raised by the Respondents are decided in Court. If the Respondents wanted to challenge that Order in Court, they should have done so long ago. Withholding sanctions until the Respondents seek and obtain review of the Discovery Order could result in an indefinite delay in the resolution of the issues in this case. That should not happen based on the Respondents' mere allegation that it will seek and obtain Court review at some unspecified time.

J.L.L.